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EXAMINER

AKINTOLA, OLABODE

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/720,856
Filing Date: November 24, 2003
Appellant(s): ROBERTS, TIMOTHY

Glen M. Kellett
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 16, 2010 appealing from the Office action mailed November 27, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-9, 11-13 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson et al. (USPN 5819092), hereinafter Ferguson.

Re claims 1, 11 and 17: Ferguson teaches a method of billing a communication network user for the purchase of goods or services associated with the transport of packet from the communication network into a packet communication network, each packet having an address which identifies a provider of goods or services, wherein the method is executed by a server and

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comprises: accessing, by the server, a set of rules (col. 29, lines 35-44 “*specify the fees that will be levied on or paid to users*”); determining, by the server, from said rules and each packet address, a respective billing tariff and a network user account to be debited for the transport of that packet (col. 30, lines 20-58, “*Levying Fees on Users*”); obtaining, by the server, a coupon from an account database, representing an amount of credit (col. 31, lines 60 through col. 32, line 4, col. 18, lines 30-39); and debiting, by the server, a network user account by the amount of that credit, and allowing the transport of packet traffic for that network user (abstract, col. 8, lines 55 through col. 9, line 20, “*A transaction can debit a user’s account*”).

Ferguson does not explicitly teach that the debiting of the network user is done before allowing the transport of the packet traffic for the network user. Official notice is hereby taken that the concept of debiting a user account before providing a good or service (in this case transporting packet traffic for the network user) is old and well known. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ferguson to include this feature for the obvious reason of guaranteeing that service provider receives payment before providing such goods or services.

Re claim 2: Ferguson teaches wherein account details for network users and account details of providers of goods and services are stored in a common accounts database (col. 8, lines 55 through col. 9, line 20).

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Re claim 3: Ferguson teaches wherein transfers of credit between accounts stored in the accounts database are determined from coupons generated for each transaction (col. 31, lines 60 through col. 32, line 4)

Re claims 4, 5, 12, 13, 18 and 19: Ferguson teaches wherein network users have postpaid account (col. 8, lines 55 through col. 9, line 20, col. 29, lines 35-44). Ferguson does not explicitly teach wherein network users have prepaid accounts; wherein each user account is accorded a respective credit limit. Official notice is hereby taken that the concept of using a prepaid or postpaid accounts for transaction wherein the user account is accorded a credit limit is old and well known. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ferguson to include this feature for the obvious reason of providing alternative forms of payment to the user, thereby enhancing the flexibility of the system.

Re claim 6: Ferguson teaches wherein user validation is performed prior to completion of a transaction (abstract, col. 3, lines 62-65, col. 10, lines 1-10).

Re claims 7, 15, 16 and 20: Ferguson does not explicitly teach wherein the network is a wireless network. Official notice is hereby taken that the use of wireless network is old and well known. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ferguson to include this feature for the obvious reason of providing wireless alternative to the user, thereby enhancing the flexibility of the system.

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Re claim 8: Ferguson teaches a method executed on a server configured to facilitate on line shopping, the method comprising: debiting, by the server, the cost of goods or services purchased by a customer to that customer's (postpaid) account with a network operator (abstract, col. 8, lines 55 through col. 9, line 20, "*A transaction can debit a user's account*"); applying, by the server, a corresponding credit to an account held by a provider of those goods or services(abstract, col. 8, lines 55 through col. 9, line 20, "*A transaction can debit a user's account*", col. 29, lines 52-55); obtaining, by the server, a coupon from an account database, representing an amount of credit (col. 31, lines 60 through col. 32, line 4, col. 18, lines 30-39); and debiting, by the server, a network user account by the amount of that credit, and allowing the transport of packet traffic for that network user (abstract, col. 8, lines 55 through col. 9, line 20, "*A transaction can debit a user's account*").

Ferguson does not explicitly teach prepaid or postpaid account; and that the debiting of the network user is done before allowing the transport of the packet traffic for the network user.

Official notice is hereby taken that the use of prepaid or postpaid account and concept of debiting a user account before providing a good or service (in this case transporting packet traffic for the network user) are old and well known. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ferguson to include these features for the obvious reason of providing alternative forms of payment to the user and guaranteeing that service provider receives payment before providing such goods or services.

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Re claim 9: Ferguson teaches wherein a transaction charge is retained by the network operator (abstract, col. 8, lines 55 through col. 9, line 20, “*A transaction can debit a user’s account*”).

Re claims 10 and 14: Ferguson teaches wherein a supplier of goods and services is credited with a portion of the network operator’s revenue for the transport of the packet traffic relating to a transaction (abstract, col. 4, lines 64-67, col. 8, lines 55 through col. 9, line 20, “*A transaction can debit a user’s account*”).

(10) Response to Argument

The Examiner summarizes the various points raised by the Appellant and addresses them individually.

A. Rejection of claims 1-7 and 11-16 under 35 U.S.C. § 103(a) as being unpatentable over Ferguson.

1. Regarding independent claims 1 (representing claims 1-7 and 11-16), Appellant asserts that Ferguson fails to teach
 - a. determining, by the server, from said rules and *each packet address*, a respective billing tariff and a network user account to be debited for the transport of that packet.
 - b. Obtaining, by the server, a coupon from an account database, representing an amount of credit (see Appeal Brief , pages 10-13).

Examiner respectfully disagrees with Appellant’s assertions.

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In Response to 1(a): The claims recite that the packet address identifies a provider of goods or services. This is interpreted as a URL of a good or service provider using HyperText Transfer Protocol (HTTP). Fergusson explicitly teaches various examples of fees that can be levied against the user's account (col. 30, lines 20-58) under different scenarios. For example, Ferguson teaches levying users who access certain parts of an otherwise free online service. Ferguson teaches that a fee could be charged for users who wish to access full text search capabilities on back issues (see col. 30, lines 48-55). Examiner notes that the packet address in this case is the URL that points to the location of full text back issues using the http protocol (col. 4, lines 21-27, col. 6, lines 55-62). Therefore, it obvious from the description of Ferguson that the billing tariff is determined based on the website that user wishes to access using the http protocol or URL and specified fees that will be levied on the user (col. 29, lines 35-44).

In Response to 1(b): Examiner broadly interprets the term "coupon" as quote or amount to be charged (see Applicant's specification on page 10, lines 21-22). Fergusson explicitly teaches a "coupon" (see col. 31, lines 60 through col. 32, line 4, col. 18, lines 30-39). Examiner notes the description of "coupon" as explained in Applicant's remarks filed on 9/9/2009 on page 12 is not claimed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Examiner also notes that Applicant's description of coupon as "charging of different rate depending on the contact (i.e., is the user simply browsing a website or downloading music),

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crediting of the provider (e.g., the provider is credited for download but not browsing)” (see Applicant’s remarks on page 12, lines 2-4) is taught by Fergusson (col. 30, lines 52-59).

2. Regarding independent claim 8 (representing claims 8-10), Appellant asserts that Ferguson fails to teach

- a. obtaining, by the server, a coupon from an account database, representing an amount of credit.
- b. applying, by the server, a corresponding credit to an account held by a provider of those goods or services (see Appeal Brief , pages 13-15).

Examiner respectfully disagrees with Appellant’s assertions.

In Response to 2(a): Examiner notes that this limitation is similar to 1(b) above and the response is similarly applicable (see “in response to 1(b)” above).

In response to 2(b): Ferguson explicitly teaches that the online service may charge or *pay* a user or *content provider* as stated in step 240 (col. 8, lines 55 through col. 9, line 20, see also col. 29, lines 45-55).

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3. Regarding independent claim 17 (representing claims 17-20), Appellant asserts that Ferguson fails to teach

a. a packet analyzer for determining from said rules and each packet address, a respective billing tariff and a network user account to be debited or credited for the transport of that packet.

b. means for obtaining a coupon from an account database, representing an amount of credit (see Appeal Brief , pages 15-17).

In Response to 3(a): Examiner notes that this limitation is similar to 1(a) above and the response is similarly applicable (see “in response to 1(a)” above). Furthermore, the packet analyzer is broadly interpreted as software running on the server that performs the aforementioned functions. Ferguson teaches said server.

In Response to 3(b): Examiner notes that this limitation is similar to 1(b) and 2(a) above and the response is similarly applicable (see “in response to 1(b)” above). Furthermore, the means for obtaining a coupon is a server (compare to claim 1, “obtaining, by the *server*”). Fergusonson explicitly teaches said server.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
Olabode Akintola
/Olabode Akintola/
Primary Examiner, Art Unit 3691
14 September 2010

Conferees:
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